

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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PHILIP J. LYONS,

Plaintiff,

v.

**ORDER**  
11-CV-1040-A

DR. JADOW RAO, Facility Health Service  
Director at Attica Correctional Facility,

Defendant.

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The above-referenced case was referred to Magistrate Judge Leslie G. Foschio pursuant to 28 U.S.C. § 636(b)(1) for pretrial proceedings. On March 27, 2014, Magistrate Judge Foschio filed a Report and Recommendation (Dkt. No. 15) recommending the action be dismissed pursuant to Fed. R. Civ. P. 25(a)(1) for failure to substitute a successor or representative within 90 days of a suggestion of death of plaintiff on the record. Magistrate Judge Foschio further recommended that Defendant's motions to dismiss on other grounds be denied as moot.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

**ORDERED**, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation (Dkt. No. 15), the action is dismissed, and the defendant's motions to dismiss (Dkt. No. 10) are denied as moot.

The Clerk of Court shall take all steps necessary to close the case.

**IT IS SO ORDERED.**

*Richard J. Arcara*  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: May 20, 2014